

- D. Federal tax liens not recorded in the records of the Lawrence County Register of Deeds Office.
- E. Any instruments or documents that were recorded in the Lawrence County Register of Deeds Office subsequent to the effective date of this Opinion.
- F. The rights of any person or persons (other than those persons shown herein) who are in possession of the properties or any part thereof.
- G. Possible claims for improvements either by way of labor, services or materials furnished, now in process or completed within the past 120 days, for which a Mechanic's Lien Statement can still be filed.
- H. Zoning, building, or land use regulations or restrictions which may affect the use or proposed use of the properties.
- I. All section line highways which exist by operation of law in South Dakota (SDCL §31-18-1), and all roadways, railroads, and highways which would be shown by a ground inspection.
- J. Any rights or claims not extinguished by, and statutory exceptions set forth in South Dakota Codified Laws Chapter 43-30 (Marketable Title Statutes).

IX. COMMENTS AND QUALIFICATIONS

A. No opinion is expressed as to the overall validity of the lode claims since many of the necessary components of a valid mining claim consist of the proper performance of physical acts on the ground, such as: (1) discovery of a valuable locatable mineral; (2) posting a proper location notice on the claim; (3) staking the boundaries of the claim; and (4) performance of annual assessment work. It is, of course, impossible to determine from the documents that have been examined whether such work was, in fact, performed and, if so, whether it was performed properly. Similarly, we can express no opinion as to whether conflicting claims have been located by third parties on the subject properties other than those claims actually indexed to the subject properties in the title records.

B. The following comments relate to all of the above-listed claims.

1. On October 16, 1974, Commonwealth Mining Co. and T. E. Congdon entered into a mining lease with option to purchase which included the subject properties (Doc. 418/264). On April 8, 1975, T. E. Congdon assigned 80% of his rights in the October 16, 1974 lease to Cyprus Mines Corp. (Doc. 83-2447). On October 17, 1983 Thomas E. Congdon assigned and quitclaimed all of his interest in the properties (which would have been the remaining 20%) to CoCa Mines Inc. (Doc. 83-6053).

Note: On December 31, 1982, Congdon & Carey, Ltd. assigned all of its rights in the October 16, 1974 lease with option to purchase to CoCa Mines Inc. (Doc. 83-2386). However, no instrument has been recorded showing that Congdon & Carey held any interest in the lease and option.

2. On June 1, 1983, Cyprus and CoCa assigned their interest in the October 16, 1974 lease with option to purchase to Lacana Mining, Inc. (Doc. 83-5768). Lacana Gold Inc. assigned its interest in the June 1, 1983 lease to its wholly-owned subsidiary, Gilt Edge Inc., by an Assignment and Assumption Agreement dated January 11, 1985 (Doc. 88-647). That Assignment states that Gilt Edge is a wholly-owned subsidiary of Lacana Gold Inc. and further states that Lacana Mining Inc. changed its name to Lacana Gold Inc. pursuant to July 9, 1984 documents filed with the Nevada Secretary of State. On December 31, 1986, Cyprus and CoCa (as a joint venture) assigned (Doc. 88-1522) and quitclaimed (Doc. 88-2797) their interests in the October 16, 1974 lease and option to Gilt Edge Inc. In a February 10, 1988 lease amendment (Doc. 88-792), and another lease amendment (92-737), Brohm Mining Corp. states that it is the successor in interest to T. E. Congdon's interest in the October 16, 1974 lease and option between Commonwealth and T. E. Congdon. This is verified by a January 15, 1987, Certificate of Amendment filed with the South Dakota Secretary of State's office changing the corporate name of Gilt Edge Inc. to Brohm Mining Corp. We recommend that this document be recorded with an affidavit listing the claims so that it is indexed to the claims.

3. On November 1, 1981, Cyprus transferred its 80% interest in the October 16, 1974 lease with option to purchase to its wholly-owned subsidiary B H Gold Mining Co. (Doc. 83-5754). Subsequently, Cyprus transferred that same 80% interest to Lacana Mining Inc. effective June 1, 1983 (Doc. 83-5768), without first recording a document that Cyprus had reacquired the interest it had previously transferred to B H Gold Mining Co. However, Doc. 83-5755, which does not appear in any of the subject properties' chains of title, states that B H Gold Mining Co. merged with Cyprus on May 27, 1983 (i.e., prior to the Cyprus transfer to Lacana). Accordingly, Doc. 83-5755 should be recorded again with an appropriate affidavit for it to be indexed to all of the properties' chains of title to insure no confusion as to the interest formerly held by B H Gold Mining Co.

C. The 1979, 1981 and 1982 Affidavits of Labor filed for the Llewellyn claim (Doc. 79-3012, 81-2806, and 82-3928) misspell the claim as "Llewelyn".

D. The Rattlesnake Fraction unpatented lode claim was apparently located over ground partially encompassed by the Lowry Fraction patented lode claim, M. S. 1992. Accordingly,

this title opinion should be read in conjunction with the title opinion for the Lowry Fraction patented lode claim of Mineral Survey No. 1992.

1. The patent to the Lowry Fraction was issued to the Gilt Edge Maid Gold Mining Company on February 11, 1911. However, that patent was not recorded until 1986. This failure to record the patent apparently led to the Rattlesnake Fraction lode being located over some of the same ground as the Lowry Fraction in 1961 by the Conco Mining Company (Doc. 352/566). The unpatented location embraced 0.54 acres (versus 0.521 acres for the patented Lowry Fraction).

a. A June 1, 1983, Assignment of Lease (Doc. 88-5768) assigned Cyprus and Coca's interests in certain leases and properties to Lacana Mining Inc. Included was reference to an October 16, 1974, lease and option between Commonwealth Mining Co. of South Dakota and Thomas E. Congdon, as lessee (Doc. 418/264) which lease included the Rattlesnake Fraction unpatented lode mining claim, and indicated it was located in 1961, and contained .54 acres.

b. On December 31, 1986, Cyprus Mining Corporation and CoCa Mines Inc. quitclaimed their interest in the above 1983 Assignment of Lease, and the properties referenced therein, to Gilt Edge Inc. (Doc. 88-2797). The property Exhibit to that 1986 Quitclaim Deed listed the 1974 Commonwealth/Congdon lease, including the Rattlesnake Fraction. That Exhibit also stated that:

The original Lease dated October 16, 1974 between Commonwealth and Congdon (the "Commonwealth Group") included the Rattlesnake Fr. unpatented lode. It was subsequently determined that the ground covered by this claim is in fact occupied by the following patented lode: Lowry Fraction; Mineral Survey No. 1992; Patent 176601; Gross Acreage 0.521.

c. Additionally, Brohm Resources, Inc. obtained a Quitclaim Deed dated June 30, 1986 (Doc. 86-3237) from Robert Nash and Rose Marie Ogden which stated that the Lowry Lode of M.S. 1992 was being conveyed and that the property was also known as the "Sansom Lode" and the "Rattlesnake Fraction" and that the property embraced "approximately 1/2 acre".

d. Finally, a 1908 pre-patent plat of the area (Doc. 86-3235) shows a property identified as "Sur. No. 1992, Lowry Fraction Lode" located immediately between "Sur. No. 1225 Dakota Maid" and "Sur. No. 188. Rattlesnake Jack." The location certificate for the Rattlesnake Fraction and the patent to the Lowry Fraction (Doc. 86-3236) both describe them in terms of points of